REMARKS

This Amendment is submitted in response to the Examiner's Action dated July 16, 2003, having a shortened statutory period set to expire October 16, 2003.

In that action the Examiner has withdrawn the indicated allowability of claims 1, 13 and 25 and has taken the position that *Diaz et al.*, United States Patent No. 5,809,021 discloses a back off period to deal with congestion. The Examiner also believes that acknowledging the existence of such a back off period means that some time interval must be computed because the period could not progress indefinitely and that that time must be based upon input buffer occupancy since *Diaz et al.* discloses that when a predetermined threshold is reached within the input buffer the back off period is terminated.

Based upon this position, the Examiner has rejected claims 1-6, 8-18 and 20-25 under 35 U.S.C. § 103(a), as being unpatentable over *Fichou et al.*, United States Patent No. 5,790,522 in view of *Diaz et al.*, United States Patent No. 5,809,021. That rejection, insofar as it might be applied to the claims as amended herein, is respectfully traversed.

The Examiner is correct in that *Diaz et al.* does disclose the existence of a back off period to be utilized when a congested egress buffer **250** exists by communicating to ingress buffers **240**, **242** and **244** to temporarily halt or back off on the amount of traffic being transmitting toward the congested output buffer **250** (*see* column 21, lines 5-10). Based upon a careful consideration of the Examiner's comments and a careful review of *Diaz et al.*, Applicant has amended claims 1, 15 and 25 to expressly recite that the delay interval is computed "based upon said input buffer occupancy . . ." and that restart of data transmission is delayed in accordance with that calculated delay interval. Applicant urges that this amendment clearly distinguishes the present invention from the teaching of *Diaz et al.* in that *Diaz et al.* teaches that the back off time

assigned is "a 32 bit unsigned positive integer number representing the maximum number of system bus cycles that any congesting packet bus overlay entity has to back off upon receipt of the back off message. The actual back off time is derived randomly from the maximum back off time by each receiving packet bus overlay entity according to the method illustrated within FIG. 8c." (*see* column 22, lines 16-24, *emphasis added*).

In accordance with the description of FIG. 8c *Diaz et al.* teach that, the actual back off time is chosen by a division of the maximum back off time by a power of 2^N, wherein ^{N} is a random value between 0 and ^{N} obtained by the ingress block from a random number generator." (*see* column 23, lines 1-5). Consequently, Applicant urges that it is beyond cavil that *Diaz et al.* cannot be said to show or suggest in any way the computation of a delay interval based upon input buffer occupancy as *Diaz et al.* expressly teaches that the delay interval is a maximum interval divided by a random number. It is therefore obvious that the delay internal is not calculated based upon the input buffer occupancy as set forth expressly within the claims of the present application, as amended herein, and further that the delayed restart of data transmission in *Diaz et al.* does not occur in accordance with a computed delay interval as set forth expressly within the present claims, but rather either upon the elapse of the randomly selected back off time or alternatively, when severe congestion threshold is reached at the ingress side of the *Diaz et al.* system.

Thus, *Diaz et al.* teaches that back off is terminated either at the end of a randomly selected back off time or in response to severe congestion at the ingress side of the buffer. This is completely and absolutely contrary to the teachings of the present invention, as set forth within the claims as amended herein, wherein a delay interval is computed "based upon said input buffer occupancy" and wherein data transmission is delayed and restarted in accordance with

that computed delay interval. Consequently, Applicant urges that claims 1-6, 8-18 and 20-24 define patentable subject matter or this combination of references and withdrawal of the Examiner's rejection is therefore respectfully requested.

The Examiner has rejected claim 25 under 35 U.S.C. § 103(a) as being unpatentable over *Fichou et al.*, United States Patent No. 5,790,522 in view of *Diaz et al.*, and further in view of *Basso et al.*, United States Patent No. 5,787,071. That rejection also is respectfully traversed insofar as it might be applied to the claim as amended herein. As noted above, *Fichou et al.* and *Diaz et al.* fail to disclose or suggest a delay interval which is computed based upon input buffer occupancy and the citation of *Basso et al.* for its teaching of throttling traffic when traffic exceeds a high threshold without regard to priority cannot not be said to show or suggest the invention set forth within claim 25, as amended herein, wherein the delay interval is computed based upon input buffer occupancy and wherein restart of data transmission occurs in accordance with the computed delay interval. Consequently, Applicant urges that claim 25 recites patentable subject matter over this combination of references and withdrawal of this reference is respectfully requested.

As set forth within the claims of the present application, as amended herein, a delay interval is computed based upon input buffer occupancy and none of the references cited by the Examiner shows or suggests a delay interval calculated in that manner. Consequently, Applicant urges that claims 1-6, 8-18 and 20-25 define patentable subject matter and passage of this application to issue is therefore respectfully requested.

No additional fee is believed to be required; however, in the event any additional fees are required, please charge IBM Corporation Deposit Account No. 50-0563. No extension of time is believed to be necessary. However, in the event an extension of time is required, that extension of time is hereby requested. Please charge any fee associated with an extension of time to IBM Corporation Deposit Account No. 50-0563.

Respectfully submitted,

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